Davis Beach Company, d/b/a Carambola Beach Hotel and Golf Club *and* Virgin Islands Workers Union, Local 611, a/w The Hotel Employees and Restaurant Employees International Union, AFL–CIO. Cases 24–CA–6006, 24–CA–6063, and 24–CA–6269

June 19, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On December 19, 1991, Administrative Law Judge Arline Pacht issued the attached decision. The General Counsel filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions, and to adopt the recommended Order, which is modified to reflect the amended remedy.[3]

[1] No exceptions were filed to any of the judge's unfair labor practice findings.

[2] The General Counsel excepts to the judge's finding that a conversation between employee Theophilus Christopher and Executive Chef McDonnell, regarding the Respondent's failure to recall Christopher from layoff, occurred in February 1990. The evidence supports the General Counsel's contention that this conversation occurred in October or November 1989, at a time when the Respondent was recalling its kitchen staff.

In addition, the judge erroneously stated that certain events occurred in 1989, rather than in 1990. Accordingly, we correct the judge's decision as follows:

1. In the section of the judge's decision titled ''c. The Failure to Recall Christopher Following Hurricane Hugo,'' second paragraph: ''In early November 1990.''

2. In that same section, sixth paragraph: ''October 2, 1990.''

3. In the section of the judge's decision titled ''Respondent Discriminated against Christopher,'' third paragraph, first sentence: ''November 30, 1990,'' and the same paragraph, second sentence:''October 1, 1990.''

4. In that same section, fourth paragraph: ''mid-November 1990.''

[3] The General Counsel excepts to the judge's recommended remedy and Order to the extent that they require the Respondent to make employee Christopher whole for losses incurred from October 1, 1990. The judge stated in the ''remedy'' section of her decision that this was ''the date on which he should have been recalled.'' The General Counsel contends that Christopher is entitled to backpay beginning in October or November 1989. We find merit in the General Counsel's exception. The record and the judge's unfair labor practice findings clearly support the conclusion that the Respondent unlawfully discriminated against Christopher when it failed to recall him from layoff in late October or early November 1989. Accordingly, we shall modify the remedy and recommended Order to provide that the Respondent must make Christopher whole for losses incurred since October or November 1989; the precise date shall be left to compliance.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Davis Beach Company, d/b/a Carambola Beach Hotel and Golf Club, St. Croix, United States Virgin Islands, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b).

''(b) Offer Theophilus Christopher immediate and full reinstatement to his position as a chef de partie or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him from since October or November 1989, in the manner set forth in the remedy section of this decision.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge you because of your concerted, protected activities or because you have engaged in activities on behalf of the Virgin Islands Workers Union, Local 611, a/w the Hotel Employees & Restaurant Employees International Union, AFL–CIO or any other labor organization.

WE WILL NOT refuse to recall you and classify you in lower job categories at lesser rates of pay because of your activities on behalf of a union or because you took part in a proceeding before the National Labor Relations Board.

WE WILL NOT issue warning notices or impose onerous terms and conditions of employment on you because you have engaged in activities on behalf of a union or testified in a National Labor Relations Board proceeding.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Clarence Brown, Julian Peters, and Hildred Pryce immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings or other benefits resulting from their discharges, less any interim net earnings, plus interest.

WE WILL offer Theophilus Christopher immediate and full reinstatement to the position of chef de partie or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and WE WILL make him whole for any loss of earnings or other benefits he suffered as a result of our failure to recall him since October or November 1989, unlawfully classifying him as a demi chef and paying him at a rate below that to which a chef de partie was entitled.

WE WILL permanently remove from our files any references to the unlawful discharges of Clarence Brown, Julian Peters, or Hildred Pryce, any references which classify Theophilus Christopher as a demi chef, and any second step written warnings or recordations of verbal warnings issued to him since his recall. WE WILL notify these employees in writing that this has been done and that these matters will not be used in any way against them.

DAVIS BEACH COMPANY, D/B/A CARAMBOLA BEACH HOTEL AND GOLF CLUB

Harold E. Hopkins Jr., Esq., for the General Counsel.[1]
Arch Stokes, Esq. and *Frederick L. Warren, Esq. (Stokes, Lazarus & Carmichael)*, of Atlanta, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARLINE PACHT, Administrative Law Judge. On charges filed by Virgin Islands Workers Union, Local 611, a/w the Hotel Employees and Restaurant Employees International Union, AFL–CIO (the Union) on August 21 and December 15, 1989, as amended on January 29 and March 8, 1990, a consolidated complaint issued alleging that Davis Beach Company, d/b/a Carambola Beach Hotel and Golf Club (Respondent or Carambola) violated Section 8(a)(1) and (3) of the Act. Specifically, Respondent is alleged to have imposed onerous and rigorous conditions of employment on employees Clarence R. Brown, Ruthine Augustus, and Theophilus Christopher; discharged Brown, Augustus, Julian Peters, and Hildred Pryce; and failed to recall Christopher because of their activities on behalf of the Union.

[1] Hereinafter referred to as the General Counsel.

The matters in Cases 24–CA–6006 and 24–CA–6063 came to trial before me on November 13, 1990, and, after 10 days of hearing, concluded on February 1, 1991. Thereafter, on February 28, 1991, a complaint issued in Case 24–CA–6269 which was consolidated with the prior cases, alleging that after Christopher's recall to work, Respondent imposed discriminatory working conditions on him because of his union activity and for having testified in the earlier proceeding.[2] Respondent filed timely answers to both complaints denying that it committed any unfair labor practices. The trial reopened on April 27, 1991, and closed on May 1. During these proceedings, the parties had full opportunity to examine and cross-examine witnesses, to introduce documentary evidence,[3] and to argue orally. After considering the witnesses' demeanor, the General Counsel's posttrial brief,[4] and on the entire record, pursuant to Section 10(c) of the Act, I make the following

FINDINGS OF FACT

I. JURISDICTIONAL FINDINGS

At all times material, Respondent operated a hotel resort and golf club complex located at Davis Bay, St Croix, U.S. Virgin Islands. During the 12-month period prior to issuance of the first consolidated complaint, which is representative of its business operations during all times material, Respondent derived gross revenues in excess of $500,000 and purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the territory of the U.S. Virgin Islands. Based on these admitted facts, I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is, and has been at all times material, a labor organization with the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background: The Union Campaigns*

Carambola Beach Hotel opened in 1986 under the management of CSX Corporation.[5] In the summer of 1987, Union President Ralph Mandrew commenced an organizational drive among the Carambola employees, but withdrew the election petition shortly before the date of the scheduled election. A year later, in the fall of 1988, mandrew initiated another union campaign which culminated in an election on December 23. With 266 employees voting, the Union lost the election by 66 votes.

[2] The complaint was amended on April 29, 1991, to add subpar. 6(b)(vi) alleging that Respondent unlawfully maintained ''Christopher in a lower position classification and wage rate, while performing the same and/or similar work of other employees and who are paid at a higher rate of pay.''

[3] Exhibits offered into evidence by the General Counsel are cited as General Counsel's exhibit (G.C. Exh.) followed by the exhibit number; Respondent's exhibits are designated (R. Exh.), and references to the transcript as Tr.

[4] Counsel for the Respondent advised me that they would not be submitting a brief.

[5] In fact, from 1986 to 1989, a subsidiary of CSX, Rock Resorts, managed the hotel. After 1989, Rock Resorts was replaced by another CSX subsidiary, the Greenbriar Resort Management Company.

S. Lee Bowden, a CSX employee, came to Carambola as its general manager and chief executive officer in April 1987, after the first union campaign faltered. However, he acknowledged knowing about Mandrew's role in that campaign. He also admitted knowing that Mandrew had attempted to organize employees at a predecessor hotel, some 10 or 15 years earlier.[6]

Bowden further conceded that he took a strong stand against union representation in general and Mandrew's Union in particular during the 1988 preelection period. Indeed, Julian Peters, one of the alleged discriminatees in this case, testified uncontrovertedly that Bowden once remarked he would ''do anything in his power to stop the union.'' (Tr. 230.)

On the advice and with the assistance of Dennis O'Toole, vice president of human relations for Rock Resorts, Bowden held mandatory departmental meetings with the employees prior to the election. At one such meeting, a videotape of a television news program was shown which depicted the Hotel Employees Restaurant Employees International Union leadership as corrupt and tied to organized crime figures. Several government witnesses testified that at other meetings, Bowden and O'Toole implied that employees might lose benefits such as insurance coverage and cafeteria privileges if the Union prevailed, since bargaining would start at ''ground zero.'' Bowden and O'Toole both maintained that they did not threaten employees with the withdrawal of benefits; rather, they stated that if the Union prevailed, negotiations would start at zero and that current benefits might not remain intact. In an effort to counter documents introduced into evidence by the General Counsel which indicated that department managers had prepared written lists identifying the union sympathies of each employee under their supervision, Bowden explained that department managers were warned not to interrogate employees' about their union leanings. Instead, they simply were asked to assess the workers' attitudes toward the Company. Record evidence indicates that the managers complied with this request and prepared lists which reflected the pro or antiunion leanings of the employees under their supervision.

Each of the alleged discriminatees in this case was, to varying degrees, an activist in the union campaign. Thus, Mandrew relied on Clarence Brown and Theophilus Christopher as his principal lieutenants. They, together with Peters, spoke to fellow workers on behalf of the Union and distributed authorization cards, recruiting Price and Augustus to assist them in this effort. In addition to her role in the union campaign, Augustus also was alleged to be an outspoken advocate who challenged terms and conditions of employment on behalf of her coworkers. Peters and Brown served as union observers in the November 1988 election, roles which did not go unobserved by Bowden.

The Respondent posits that the union proclivities of these five employees had no bearing on their discharges. Peters, Brown, and Pryce were terminated due to a need to reduce the number of employees in the maintenance department. Ruthine Augustus was discharged when she repeatedly failed to abide by the hotel's productivity standards; Theophilus Christopher was laid off following Hurricane Hugo and not recalled until December 1990 because he was lower in rank than other, more versatile chefs.

I turn first to the the allegations bearing on the discharges of Peters, Brown, and Pryce, each of whom was terminated on July 28, 1989,[7] supposedly for lack of work in the maintenance department.

B. *Julian Peters' Discharge*

Peters first came to work for Respondent in November 1986, after working 14 years for Martin Marietta, principally as a process operator. Initially, Peters worked at Carambola as a houseman. After 5 or 6 months, he transferred to the maintenance department where he worked in the reverse osmosis (RO) and waste water plants, relying on skills not unlike those used in his prior job at Martin Marietta.[8]

Peters joined three other RO operators, Wilbert Nugent, Leonard Lester, and Jonas Abraham, each of whom worked a 6-day week on an individual rotating shift until April 1988, when their workweek was reduced to 5 days. Peters then realized that the RO operators never had received overtime pay for the sixth day of work. With the concurrence of his coworkers, Peters complained to the Virgin Islands Department of Labor. Thereafter, the department conducted an investigation and subsequently advised Peters that he would receive a check for back wages owed. After 3 or 4 months elapsed, Peters again contacted the department of labor to advise them he had not been reimbursed. In the latter part of June, within 2 weeks of his second call, Peters received a check covering overtime wages only for 1988. Knowing that he also was owed backpay wages for work performed in 1987, Peters contacted Carambola's comptroller, Alan Weeks, about these other sums. He was terminated shortly thereafter.

Weeks confirmed that the department of labor had conducted an audit in the spring of 1989 and determined that the hotel owed overtime wages to the RO operators. As a result, back wages were paid to them in late June. Weeks also acknowledged that following the government audit, he advised Bowden to terminate the sixth day in the RO operators' workweek to avoid future overtime pay.

Weeks further explained that the department of labor contacted him again in July and suggested that the hotel might owe additional sums for 1987 and 1989. Following this inquiry, Weeks was obliged to review relevant documents for those years. Consequently, many months later, Peters and the other RO operators received the balance of the sums owed for their overtime labor.

Several weeks prior to Peters' layoff, consistent with Weeks' recommendation, Dawes met with the entire maintenance crew to announce that the RO midnight shift was being abolished. At that time, Dawes assured Peters and Abraham, the two most junior RO operators, that they would continue working 2 days in the RO plant and 3 days doing general maintenance work. Accordingly, Peters began performing maintenance chores, such as painting, for 3 of his 5 workdays. Dawes did not deny giving Peters this assurance.

On July 27, Peters' foreman, Hilary Sampson, forewarned him that Dawes intended to lay him off the following day.

[6] Fountain Valley Resort and Golf Club , which also was managed by Rock Resorts, previously occupied the site on which Carambola was located.

[7] Unless otherwise noted, all events occurred in 1989.

[8] Reverse osmosis refers to procedures by which water is converted into a potable supply.

At the same time, Sampson expressed bewilderment and dismay at Dawes' decision. Just as Sampson had forecast, the next day Dawes told Peters that he was being laid off due to lack of work. In protesting this decision, Peters pointed out to Dawes that he had more seniority than the other operators, referring to his longevity with the hotel rather than in the maintenance department. He also asked why Dawes chose him for layoff rather than a bellman who just a few days earlier, was transferred into the maintenance department and was assisting Peters with general maintenance tasks.

Dawes testified that his rationale for retaining the bellman rather than Peters was that the hotel did not wish to lose its best ''front of house'' people; that this bellman had a good manner with guests and would need to be returned to that position in high season. Yet, at another point in his testimony, Dawes admitted that the transferred bellman was not too friendly, that he grumbled a lot and wanted to return to his former job working with guests.

After being discharged by Dawes, Peters met with Personnel Manager Percy Marshall who had a 2-week severance check prepared for him. Peters again remonstrated that as a senior employee, he should not be laid off, particularly since a bellman had transferred to maintenance 2 days before. Marshall did not reply.

In alluding to the recent transfer of a bellman, Peters was referring to a hotel policy which, as Bowden explained, called for finding other positions for qualified employees before they were terminated. Confirming Bowden's testimony about this policy, Marshall added that before a permanent employee was discharged, he would be transferred to a temporary position rather than hiring a new temporary employee. Marshall also explained Respondent's transfer policy: available positions are posted on bulletin boards located throughout the resort; if an employee is interested they may obtain information about the opening from the personnel department, and, if qualified, may file a transfer form with the approval of their current supervisor.

One of the principal organizers in the union campaign, Peters talked to coworkers on behalf of the Union, distributed authorization cards, and served as one of two union observers at the election on December 23. His union activities did not go unobserved. On one occasion the supervisor of the groundsmen challenged him about the benefits of union membership and attempted to discourage his crew from signing cards. Shortly before the election, Sampson spoke to him privately and urged him to give the Company a chance by voting against the Union.

Robert Dawes, director of facilities maintenance since March 21, had responsibility for maintaining the hotel's property including the RO plant. Dawes testified that he was compelled to reduce the work force and, since one of the RO shifts was eliminated, decided that one of the four operators would have to be terminated.

Dawes explained that he wanted to retain Nugent who was the most qualified and knowledgable of the RO operators. He also stated, for the first time at trial, that he decided to keep Lester on the staff because he was older than Peters and would have a more difficult time obtaining new employment. Dawes explained that he finally decided to discharge Peters rather than Abraham because he had the least departmental seniority and was, presumably, the least experienced of the two. Dawes was wrong about Peters' experience for Abraham had no previous exposure to RO equipment prior to his joining the maintenance department shortly before Peters arrived.[9] Dawes acknowledged knowing that Peters previously worked at VIALCO performing work which equipped him for his position as an RO operator. Since Dawes testified that he reviewed the personnel files of all employees in the department, including those of the RO operators, he had to be aware that Abraham had no such prior experience. Thus, the only reason which remained for retaining Abraham instead of Peters is that in Dawes' view, Abraham was the more communicative and enthusiastic employee. Nugent, who still was in Respondent's employ at the time of the instant proceeding, testified that Peters was more experienced than Abraham. However, he too opined that Peters had a less cooperative attitude than Abraham. However, since each RO operator worked alone in the self-contained RO plant, these qualities seem less vital than skill and experience. Moreover, on July 12, 2 weeks prior to his discharge, Foreman Sampson gave Peters an above average to outstanding evaluation, noting in particular that ''he frequently cooperates,'' and ''Has positive disposition.'' (Jt. Exh. 1.)

Notwithstanding Dawes' contention that he had to reduce the size of the maintenance work force, he hired or authorized the transfer of three additional employees into the department in the month before and after he discharged Peters, Brown, and Pryce.[10] What is more, maintenance workers all received pay raises in the months subsequent to these terminations. While the work force eventually was reduced in size, the reduction was primarily the result of attrition, Peters, Brown, and Pryce were the only employees whom Dawes dismissed.

C. *Clarence Brown's Discharge*

Brown, hired as a general maintenance mechanic at Carambola in December 1986, soon after the hotel opened, was the second of three employees to be terminated by Dawes on July 28. He previously worked for a subcontractor at the Hess Oil Company over a span of 7 years, doing plumbing, carpentry, refrigeration, and mechanical repairs. He then worked for Hess Oil directly as a process operator and foreman. At Carambola, Brown trained several unskilled workers—Steadman Dublin, Alton Powell, and Thomas Johnson, who occasionally were assigned to assist him as helpers. Johnson was hired into the maintenance department in June, 1 month before Brown's discharge. All three of these men continued to be employed at the hotel after Brown's termination.

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[9] When called as a witness by the Respondent, Abraham testified that Peters had not helped to train him, as Peters alleged, and attempted to disclaim a contradictory statement in his affidavit in which he previously acknowledged Peters' help. By his demeanor and testimony, Abraham clearly was extremely uncomfortable at being called on by the General Counsel to testify to matters adverse to his employer. Accordingly, I discount Abraham's courtroom testimony and rely on his affidavit which was given closer in time to the events in question and outside the presence of Respondent's counsel.

[10] In June, Dawes hired Thomas Johnson as a general maintenance mechanic. Rudolph Williams, previously a driver-helper, became a maintenance mechanic on August 19; Flavius Jones transferred from golf maintenance into the department after the hurricane.

On his supervisor's recommendation, Brown was promoted to the position of refrigeration and appliance specialist in September 1988. Although he had some past experience in repairing conventional refrigerators, he had no formal training for this new assignment involving some sophisticated equipment, and took it with a commitment from Bowden that he would receive the requisite training.[11] He also was assured that a subcontractor, A & C Refrigeration, which had installed major equipment at the hotel, would continue to perform some maintenance work on air conditions and refrigeration equipment on a 24-hour on-call basis. However, Brown performed most of the day-to-day refrigeration work and, generally worked alone.

A few months before Dawes' March arrival at Carambola, Respondent hired a different refrigeration subcontracting firm, AAA Refrigeration and Maintenance Co., whose owner, Wilson Stephens, once told Brown that he ''would do anything for Bowden'' a good friend of his. Stephens did not deny making this comment.

Stephens testified that he frequently worked with Brown but considered him an intolerable racist. As evidence of Brown's alleged intolerance, Stephens recounted one episode when he was called to the hotel to substitute 3/4-inch pipes for inadequate 1/2-inch pipes which he believed Brown had installed. According to Stephens, when Brown saw him redoing his work, he flew into a rage and insulted him by saying, ''You white people think you can just take over.'' (Tr. 1803.)

Brown had a much more benign view of his relationship with Stephens, recalling that they telephoned each other at home to discuss parts that were needed and worked together cooperatively to get their tasks done. He did acknowledge that Stephens had to correct certain pipes which he had installed. However, Brown explained that he had protested his foreman's decision to use the 1/2-inch pipes and that Stephens had agreed with him about their inadequacy. Respondent did not controvert Brown's testimony as to who was responsible for this error.

Apart from his own labor, Stephens had no employees on the AAA payroll. Instead, he subcontracted work to a Tony Wheeler. Wheeler testified that he worked with Brown on some of the hotel's specialized ice machines for only 2 days; that Brown had little experience with this unique equipment (a fact Brown readily conceded), but performed in a satisfactory manner, except that he complained about management's failure to provide him a helper.[12] Stephens admitted that the ice machines broke down frequently both before and after Brown's termination, which he attributed to their particular design.

1. Respondent's knowledge of Brown's union activities

Brown was undisputedly a leading organizer in the 1988 union drive at Carambola.[13] He distributed over 90 union authorization cards, attended union meetings and campaigned on behalf of the Union in small group discussions with employees. As Marshall acknowledged, Brown always admitted he was a union sympathizer.

On one occasion, after Brown had spoken to some coworkers during a break about stateside employers who failed to promote employees from within, one of the group complained to Personnel Director Marshall that Brown's remarks were racist in nature. Shortly thereafter, Marshall advised Brown to be careful and not to speak about the Union during working hours. Another time, Brown's supervisor sent him to town to purchase parts while management was holding a meeting with employees as part of Respondent's antiunion campaign. When Brown later questioned Bowden about his exclusion from the meeting, the hotel manager told him ''this had been done in the best interest of the company.'' (Tr. 965.) Brown had another encounter with Bowden over his decision to withhold a pay increase recommended by Brown's supervisor at the time of a March evaluation. When Brown asked Bowden about the matter, the hotel manager said that Brown was already overpaid. Just prior to the union election, Brown's supervisor requested that he take a weeklong trip to Florida ostensibly so that he could look after equipment which was being delivered from the mainland to the hotel. Brown declined the offer, believing that it was a ploy to remove him from the scene so that he could not serve as an observer or vote in the election.

Soon after Dawes arrived at Carambola, Brown asked if he had heard about his union activities. Dawes admitted that he had, and added that they did not need a union there. Brown believed that Dawes treated him in a different and more severe manner than he did other employees in the department. For example, during their first meeting, Brown told Dawes about his earlier difficulties working under a particular foreman, Ray Williams. Nevertheless, Dawes reassigned Williams as Brown's supervisor, instructing Brown that he was to take orders from no else. Brown later had a contretemps with Dawes stemming from his being assigned to work for Williams which ultimately led to Brown's 3-day suspension. Another time, Dawes chastised Brown for looking at a newspaper. Yet, the next day, Brown observed a coworker reading a paper in Dawes' presence without being rebuked. Further, Brown felt that Dawes pressured him unfairly by not providing him a helper as promised.

2. The discharge

Dawes discharged Brown on July 28, initially telling him that it was because there was a lack of work. He then added that he had contracted all the refrigeration work to Triple A. Brown protested his discharge, pointing out that parts he had ordered some months before had just arrived that day. At this, Brown testified that Dawes said, ''its not so much the work; it's the politics.'' (Tr. 894.) Dawes denied making such a statement and instead, recalled that Brown attributed his discharge to his union activity. Dawes speculated that he probably replied that Brown was not being treated differently than any other employee. In resolving this conflict, I note that Brown retained a sharp recollection of his final encounter with Dawes; it was a critical event for him; one not likely to be forgotten. Moreover, the words which he attributed to Dawes—''it's not so much the work; it's the politics''—resonate with Dawes' speech pattern, not Brown's. For these reasons, I conclude that Brown should be credited about his version of Dawes' comments at the time of his discharge.

[11] Brown's prior training consisted of a 1-year course in refrigeration taken in 1977.

[12] Wheeler had specialized training with regard to the installation and repair of the ice machines.

[13] Brown also played a prominent role in the aborted 1987 union drive.

In support of Dawes' testimony that Brown was terminated when his duties were awarded to the Triple A firm, owner Wilson Stephens testified that he did take over all the refrigeration and air conditioning work at Carambola sometime in midyear. As further confirmation, Respondent introduced into evidence a July 12 letter to Dawes in which Stephens proposed a maintenance agreement with the hotel which would authorize the Triple A company to perform preventative routine checks on each piece of equipment and make corrective repairs as appropriate on all refrigeration, air condition, and food service equipment at a cost of $27.50 per hour for one man or 1-1/2 times that rate for two men, a rate almost three times as much as Brown earned. Respondent also submitted into the record copies of all AAA's invoices to Carambola from January to September 13.

After carefully reviewing Respondent's Exhibit 4, I found no bill which covered labor for routine preventative maintenance either before or after July 28, the date of Brown's discharge.

D. *The Dismissal of Hildred Pryce*

Pryce was employed at Carambola from December 1, 1986, until the date of her discharge 2-1/2 years later on July 28, the same date on which Peters and Brown also were fired. She worked for the first 11 months as a security guard. Then in November 1987, Pryce applied for and obtained a transfer to the maintenance department as an inventory clerk. At the time of her transfer, the then maintenance department supervisor assured her that if she could not fulfill her new job requirements, personnel would transfer her back to the security department. As an inventory clerk, Pryce kept a detailed log of tools and parts which she distributed to workers throughout the facility on request. Soon after the maintenance department moved to a new facility, another employee worked with her in inventory from time to time and filled in for her on weekends.

Pryce testified without dispute that shortly after Dawes took over as maintenance department supervisor, he met with the employees, and among other things referred to the fact that some employees had quit to work at VIALCO (Virgin Islands Oil Company). He further stated that he hoped no one else would leave for there was enough work for everyone and guaranteed that no one would be laid off.

Notwithstanding his assurance, Dawes told Pryce that she was laid off on July 28. He accompanied her to the personnel office where Marshall discussed certain matters related to Pryce's termination and gave her a check for severance pay. Nothing was said about Pryce returning to the security department although she knew of an opening there for an announcement of the vacancy was posted on the employee bulletin board.

Like Peters and Brown, Pryce was a union advocate.[14] She distributed some authorization cards and promoted the union cause in conversations with coworkers. Although Pryce was less actively involved in campaigning than Peters or Brown, it is fair to conclude that management was aware of her prounion stance. Thus, she related that sometime before the election, the supervisor of the groundskeeping department told her he had persuaded his employees to vote against the Union. Just 2 or 3 days prior to the election, he urged her to tell her coworkers to reject the Union if they did not want to pay dues and lose benefits such as the hotel-provided lunch. Pryce made no secret of her views, replying that if the hotel treated the employees better, there would be no need for the Union. Pryce recounted one further incident which occurred a week prior to her discharge: while talking with Brown, he mentioned that he was being harassed by Dawes. After Pryce told him in normal tones that such things would not happen if the Union had prevailed, she noticed that Dawes and the grounds department supervisor were standing within earshot some 30 to 40 feet away.

In cross-examining Pryce, Respondent attempted to elicit an admission that she would not have been available to transfer back to a security guard's position because she held a second evening position with an independent security guard firm, Investigations Unlimited. However, Pryce testified that she held this other job for less than 6 months and worked only on a part-time basis. She further indicated that she would have preferred employment with Carambola since the pay was better. In fact, business records subpoenaed from Investigations Unlimited showed that she was employed from February 25 to October 11, worked an evening shift on weekday nights, for 4 to 6 hours, and a full daytime shift on weekends, at an hourly pay rate of $4 or $4.10. Pryce explained that when she had her exit meeting with Marshall, she did not ask about the posted security guard's job because she felt hurt by what she considered to be unfair treatment. She also thought that Marshall had some obligation to make amends by reassigning her to her old job, as she had been promised when she first transferred to maintenance.

Marshall, on the other hand, testified that she said nothing to Pryce about the available security guard position, assuming that Pryce knew about it and would apply for such a transfer if she was interested. Marshall further stated that based both on common knowledge and information provided by her assistant, she knew that Pryce held a second position with a security guard company. Therefore, Percy stated that she believed Pryce's failure to request reassignment to a security guard's position, which required working on rotating shifts, was due to her desire to continue working her second evening job. Marshall implied that if Pryce wanted to transfer, it was her burden to file the appropriate form. However, it does not appear that this procedure was uniformly followed. Thus, Marshall testified that when high season was over, she would ask employees such as bellmen and shuttle drivers whether there were other jobs they could perform, before they were dismissed for lack of work. Frequently, some of them would be transferred into the maintenance department. Since Percy knew that Pryce was to be discharged a week before Pryce did, surely, she could have at least asked Pryce whether she was interested in transferring to the vacant security guard position. Her failure to do so suggests that

[14] Jonas Abraham, who was Pryce's nephew, avowed in an affidavit taken by the General Counsel, that his aunt was a strong union supporter. On the witness stand, Abraham denied having made this assertion, contending instead that he merely described Pryce as outspoken. As noted above, Abraham was uncomfortable at having to testify in the presence of Respondent's agents and disclaimed another statement in his affidavit which I am certain represented the truth of the matter. Here, too, I am convinced that Abraham's statement in the affidavit about Pryce's union activity is more reliable than his in-court testimony.

Percy understood quite well that Respondent wanted to be rid of Pryce, not to transfer her.

E. *The Discharge of Ruthine Augustus*

Augustus[15] worked as a chambermaid in Carambola's housekeeping department from January 26, 1986, to the date of her layoff on June 3. In accordance with a productivity study conducted by Susan Carter, Respondent's executive housekeeper since October 1988, guidelines were established governing the amount of time a housekeeper was allotted to clean guest quarters. Under these standards, a housekeeper had 60 minutes to clean a guestroom following checkout (c/o) and 40 minutes for rooms which a guest continued to occupy (s/o or stayover). These timeframes included time required to travel from one room to another.[16] Each housekeeper received a daily worksheet at the start of her shift setting forth the status of her assigned rooms and on which she was required to record the time that she started and completed each guest suite. Carter acknowledged that productivity goals were not invariably met due to circumstances beyond the employee's control. For example, a ''do not disturb'' sign on a guestroom door, a late checkout or inclement weather might prevent compliance with the established timeframes.

Augustus described her typical workday as follows: starting at 8 a.m. she would spend the first 30 to 60 minutes obtaining her work assignments, obtaining any cleaning materials she might need, and walking to her first assignment. She then began her chores, going from room to room. The housekeepers took a 1-1/2-hour lunchbreak, generally at 11:30 a.m. They were not guaranteed a 40-hour week, or an 8-hour day; rather, depending on the number and status of rooms assigned, they generally worked for 6, 7, or possibly 8 hours a day.

Augustus had belonged to Mandrew's Union for many years at her prior places of employment, and continued to be a union adherent at Carambola, where she took a leadership role in organizing the housekeeping employees. Brown and Peters both provided her with authorization cards which she distributed to fellow housekeepers and to groundsmen. By her own account, Augustus did not limit her activities to the union campaign; she also was an advocate for her coworkers, speaking up for herself and others at meetings of the housekeeping department about what were perceived to be unfair management practices.

The General Counsel adduced evidence bearing on Augustus' work record in 1988 to provide background for the complaint's allegation that Respondent closely monitored Augustus' performance and imposed onerous terms and conditions of employment in the months following the election. Thus, Augustus testified that Carter frequently told her she worked too slowly, to which she would retort, ''Well, if I slow, how come you have me?'' (Tr. 1190.) Augustus was referring to the fact that she had long since passed her 90-day probationary period and worked at the hotel for more than 2 years before Carter arrived. She also defended herself against Respondent's accusations that she ''stretched time''; that is, worked fewer hours than she claimed, by pointing out that she often assisted other housekeepers complete their chores, frequently worked overtime, and was regularly called on by the hotel to work a double shift in the evenings, sometimes as much as twice a week. In fact, an examination of a random group of Augustus timecards covering a number of months prior to her discharge shows that she worked only one evening shift and did not accumulate an excessive amount of overtime.

Augustus testified about other situations which she believed reflected Respondent's harassment of her. For example, she discussed a November 1988 incident in which she was assigned to clean a construction area.[17] When she protested that she was dressed too nicely for such dirty work, Carter transferred her to her regular room cleaning work. However, regarding Augustus' outburst as intemperate and disruptive, Carter gave Augustus a written warning for insubordination. Statements of other employees who witnessed Augustus' conduct on this occasion, and which were submitted into evidence, tend to support Carter's view of the situation.

Another warning notice, dated December 31, 1988, prepared by Zulma Turner, Carter's second in command in the housekeeping department, charged Augustus with unsatisfactory work performance for ''stretching time'' by failing to adhere to the productivity guidelines. Turner noted on the warning that ''Ruthine has already been suspended twice and has had prior warnings regarding this situation. Ruthine must comply with the hotel and housekeeping rules . . . or she will be suspended pending investigation which could lead to possible termination.''(G.C. Exh. 42; Tr. 1214.) Again, Carter issued a warning on January 19 for stretching time. Moreover, after pointing out that Augustus had received four previous warnings, and two suspensions, Carter wrote that no further suspensions or counseling would be forthcoming. Rather, she cautioned that further misconduct would result in immediate termination.[18]

Augustus testified about a situation occurring on or about February 21 which in her view led to unjust censure and to the complaint's allegation of harassment. She explained that on her day off at the hotel's request, she was babysitting for a guest's child and entered a guestroom which her friend, Marie James, was cleaning, unaware that such entry was prohibited. Carter, who happened to observe her in the room with the baby, ordered her to leave immediately and prepared a warning notice about the incident. Apparently, Augustus was involved in no new incidents for the next few months

[15] Augustus, a native of the Caribbean island of Dominica, spoke a Patois, that is a native form of French as her primary language. She spoke English with such a distinct accent that it was often difficult to understand her. The transcript comes close to faithfully recording her words.

[16] Guest quarters, which consist of six living areas on a split level design, were set at a varying distance from the housekeeping headquarters. Each housekeeper was assigned a number of contiguous suites so that little time was wasted walking from one place to the next.

[17] Executive Housekeeper Carter explained that construction cleaning did not literally apply to a construction site in the normal sense of the term. Rather, it was the housekeeping department's designation for intensive cleaning of an area in which maintenance employees had been working.

[18] Evidence about warning notices dated prior to February 14 which appeared in Augustus' personnel file was offered for background purposes, not in support of unfair labor practice allegations, since the conduct to which the notices refer occurred prior to the 6-month limitations period set by Sec. 10(b) of the Act.

for on May 5, Carter reevaluated her progress and found ''because of the improvement shown in some areas, I feel that she is due an increase'' of 5 percent. (R. Exh. 8.)

At trial, Augustus was shown copies of the batch of warnings related to the above and other incidents which appeared in her personnel file, but she claimed she had never seen them before. Further, Augustus denied that she was counseled about the situations to which the notices referred or given a copy of them. However, Augustus acknowledged that she had been suspended, that her supervisors often would ''write her down'' (apparently, a reference to written warnings) and that she consistently refused to sign anything. (Tr. 1204.)

On June 3, Carter told Augustus that she was suspended for the next 3 days pending an investigation, and on June 7 terminated her. Here, as with other aspects of her testimony, Augustus' version of the circumstances attending her discharge differed radically from Carter's and Turner's accounts. Augustus stated that she was summoned to Carter's office where, with no one else present, Carter told her she was being laid off. Augustus alleged that on asking for an explanation, Carter attributed the layoff to her union involvement in that she had passed out union cards and turned the housekeepers against her. She then purportedly ordered Augustus out of her office. Augustus further related that she demanded a meeting with Bowden, and that it was not until that meeting was held on June 7, that the layoff was converted to a termination. Carter then told her, allegedly for the first time, that she was being fired for ''stretching time'' and failing to comply with Respondent's productivity standards.

Marie James, a coworker and friend of Augustus, offered supporting testimony about her own suspension on or about June 1 for stretching time and about remarks made to her by Operations Supervisor Larry Clarke. James alleged that when Carter suspended her for 2 weeks, she asked for an explanation, but received none. She also protested that she had not received a prior warning letter as called for by Respondent's progressive disciplinary system. Like Augustus, James maintained that neither on this or any other occasion had she been shown, asked to sign, or received a copy of a disciplinary notice related to her purported misconduct.[19]

James further testified that just after leaving Carter's office, she encountered Operations Supervisor Larry Clarke and angrily told him of her suspension. James testified that Clarke told her she was one of three employees management intended to get rid of; that Augustus was another who would be fired for distributing union cards.[20] James demanded a meeting with Bowden which took place a week later, with Marshall, Carter, and Turner also present. At that time, according to James, she was accused of having completed her work at 2 p.m, and signing out for the day at 3:45 p.m.[21]

Clarke, whom Respondent called as its witness, recalled that he heard that James was suspended and that when he talked to her about it much later, she expressed a great deal of anger. However, he had no recollection of what she said to him then or that he ever told her that Augustus was terminated for distributing union cards. At the time Clarke testified, he no longer was employed at Carambola and was involved in collective bargaining as a representative of employees at his new place of employment. By his own admission, he was most reluctant to appear in court.

Respondents' witnesses controverted Augustus' and James' testimony on almost every relevant point. Thus, Carter, a woman who had extensive experience managing housekeeping departments at luxury resorts, maintained that while Augustus cleaned in a satisfactory fashion, she was a difficult employee in other important respects. Specifically, Carter contended that in addition to being argumentative with supervisors and fellow workers, she consistently failed to meet productivity standards. Carter and/or Turner prepared or witnessed each of the numerous warning notices collected in Augustus' personnel file, and both women testified consistently that she was invariably counseled when a disciplinary notice was prepared. For example, Carter recalled suspending Augustus after she engaged in an angry outburst on being assigned to ''construction cleaning.'' Carter pointed out that the notice expressly stated that the matter was ''reviewed . . . with employee who refused to sign acknowledgement.'' (R. Exh. 7 (24, 25).)[22]

Carter explained that she reviewed every housekeeper's worksheet, on which the individual was supposed to record her sign-in time, when each room was started and completed, and a checkout time. In accordance with this practice, she stated that in the latter part of December 1988, she reviewed Augustus' worksheet and found 45 minutes unaccounted for, plus a checkout time that did not accord with the time she finished cleaning her last room. Consequently, Carter stated that she felt it was appropriate to issue a written warning to Augustus for stretching time since she previously had admonished her orally on a number of occasions about the same problem. Carter was present when her assistant, Zulma Turner, reviewed the warning with Augustus. Turner, who had an undergraduate degree in counseling, testified that she read the December 31 warning notice to Augustus, discussed the problem, and asked her to sign the form. Augustus refused to do so. A copy of a fifth written warning dated January 19 charging Augustus again with failing to meet the productivity guidelines appeared in her personnel file with a note that she refused to sign it. According to Turner, Augustus uniformly refused to sign anything.[23]

Relying on Augustus' claim that prior to this trial, she never knew about nor saw the warnings in her personnel file, the General Counsel alleged that Respondent manufactured these documents in order to build a case against her and to create the appearance that it had conformed to its progressive disciplinary policy. As Marshall explained this policy, for the first occurrence, the supervisor orally discussed the matter with the employee; thereafter, written warnings were given for the next two incidents of the same type, followed by a first suspension and then a second suspension pending investigation, which could lead to reinstatement or discharge.

My observation of the respective individuals' demeanor in this aspect of the case, together with a number of irreconcilable inconsistencies in Augustus' testimony, lead me to dis-

[19] James volunteered that she was unable to read.

[20] The third employee, known only as Vicki, quit her employment at Carambola voluntarily.

[21] The account set forth above reflects my understanding of James' testimony which was, at times, very difficult to follow.

[22] This incident occurred in 1988, outside the 10(b) period. It is discussed solely as background with respect to Carter's contentions regarding her practices in dispensing discipline.

[23] Although Augustus was illiterate, she could sign her name and was capable of entering numbers and times on her worksheets.

miss General Counsel's allegation of record-doctoring as groundless. I found Carter and Turner to be credible witnesses who would not concoct a phony paper trail after the fact. I also rely on the fact that Augustus' signature appears on a negative evaluation she received from Carter's predecessor who expressed concerns about her conduct and performance months before she participated in the 1989 union drive. Thus, in March 1988, the then executive housekeeper, Edith Pierce, noted that Augustus' productivity was ''well below standard;'' that she ''Needs close supervision,'' and ''Violates rules most of the time.'' (R. Exh. 8 (26).) In addition, Pierce wrote the following narrative on the evaluation:

> Quality of work is good but is overruled by her negative attitude toward supervision and . . . attitude to complete assignments. Ruthine can be argumentative and has difficulty in controlling her temper. Especially in a group. [sic] [R. Exh. 7 (4).]

This estimate of Augustus' performance, which she acknowledged receiving, was wholly consistent with the conduct which led to the warnings subsequently issued in 1989. In concluding that Carter and Turner should be credited, and that the warnings in her personnel file were not concocted after the fact, I also rely on Augustus' testimony that her supervisors constantly were ''writing her down,'' an inadvertent admission at odds with her denials of having received any warning notices.[24]

As for James' corroboration of Augustus testimony, it is noteworthy that she remained in Respondent's employ at the time of trial. Therefore, contrary to James' belief, Carter and Turner apparently were not bent on firing her and consequently, had no motive to create fictional warning notices and place them surreptitiously in James' personnel file in order to construct a case against her. Further, Larry Clarke credibly denied the statements which James attributed to him. At the time he testified in this proceeding, Clarke no longer was in Respondent's employ and was engaged in bargaining on the side of employees. Given his identification with the interests of labor, it seems unlikely that he would deny having made statements to James which might aid Augustus' case. For the foregoing reasons, I am unable to credit James' account that, like Augustus, she never received any warning notices or that Clarke told her Respondent intended to fire Augustus for her union activity.

In discussing the grounds for Augustus' termination, Carter testified that in early June, several reports came to her from housekeeping supervisors which aroused her suspicions. On reviewing Augustus' worksheets for May 31 and June 2, Carter said that she found a number of anomalies which led to the housekeeper's suspension and subsequent termination. In describing the discrepancies which appeared on the May 31 worksheet, Carter noted that (1) Augustus claimed to have taken a total of 6.77 hours to complete her cleaning assignments which meant that she should have been through for the day at 3:46 p.m., yet, she signed out at *4:30 p.m.*; (2) was observed by a supervisor entering a stayover guestroom for the second time that day at 3:35 p.m. yet recorded her entry time into that room as 4:05 p.m. and her departure at 4:35 p.m.;[25] (3) finally logged out for the day at 4:55 p.m.

On reviewing Augustus' June 2 worksheet, Carter discovered an unaccounted for 35-minute gap between completing one guest suite and beginning another. Moreover, Carter noted that she was advised by a housekeeping inspector that at 3 p.m., Augustus had not started cleaning the last room assigned to her that day. Consequently, she directed that another housekeeper clean the room and instructed Augustus to sign out. Subsequently, Carter discovered that before leaving, Augustus had written on her worksheet that she had completed this room at 3:30 p.m. Carter stated that she decided to terminate Augustus based on the number of discrepancies she detected on her worksheets.

F. *The Layoff of Theophilus Christopher*

1. Christopher's work record

Christopher, 40 years old at the time of trial, began cooking in his youth and trained to become a professional chef at a 2-year hotel restaurant program in Antigua from 1967 to 1969. Thereafter, he obtained progressively more responsible experience in dining establishments in Antigua. In 1975, he migrated to St. Croix where he worked as a chef and supervisory chef in fine restaurants. In December 1986, shortly after the hotel opened, Christopher began his career at Carambola as a cafeteria cook. Several months later, in February 1987, he was promoted to breakfast and lunch service. At the end of the same year, Christopher was promoted again to the 2 to 10:30 p.m. dinner shift. His status as either a chef de partie, as the General Counsel claims, or as a lesser ranked demi chef, as the Respondent contends, is very much in issue.

Christopher maintained and a personnel form shows, that he was promoted to the rank of chef de partie in 1987, and thereafter, performed precisely the same duties on the dinner line as did everyone else holding that title. Although his specific dinner assignments varied from time to time, as did the tasks of the other chefs, for the most part, he specialized in grilling foods.

Bowden, Marshall, and John McDonnell, executive chef at the hotel from May l, 1989, through March 17, 1990, testified that Christopher's proper title was demi chef, a rank accorded to a cook who is not experienced or skilled enough to cover all assignments or stations in a kitchen.[26] Some documents in the record bearing on this issue describe Christopher as a chef de partie. For example, General Counsel's Exhibit 16, a ''personnel action form,'' signed by then Chef

[24] In reaching the conclusion that Augustus was well aware of the warnings given to her, I have taken into account the fact that she was an uneducated woman whose speech was ungrammatical and often difficult to understand. However, the contradictions in her testimony are too gaping to ignore.

[25] A housekeeping inspector reported to Carter that she had seen Augustus enter this same guestroom, room 96, at 10:30 a.m. When the inspector asked Augustus why she was entering room 96 again at 3:35 p.m., Augustus replied that the room had a do not disturb (DND) sign out in the morning and she had been unable to clean it. However, Augustus failed to record the presence of the DND sign on her worksheet. Moreover, the inspector did not recall seeing such a sign outside the room. Further, although the inspector observed Augustus entering room 96 at 10:30, her worksheet indicates that she was cleaning a different room at that time.

[26] One of Christopher's fellow employees, Noel Coates, whom Respondent acknowledged was a chef de partie, added that a demi chef required close supervision, whereas a chef de partie did not.

Stoner and countersigned by Marshall, shows that Christopher was promoted on February 22, 1987, to chef de partie II with an hourly pay increase from $5.50 to $8. To the same effect, see Respondent's Exhibit 1(6). On the other hand, several other documents referred to him as a demi chef while another used the term ''demi chef de partie.[27] While Respondent had some written job descriptions for kitchen classifications, there apparently was none which distinguished between demi chef and chef de partie. Moreover, Marshall testified that even if such descriptions existed, no one took them into account.

The record establishes beyond any doubt that regardless of his formal title, Christopher's culinary skills were highly honed, and that he had extensive experience both prior to and after his employment at Carambola at least equal to if not greater than that of his coworker, Coates. Further, Respondent's dinner menu worksheets, which recorded each chef's evening assignments, demonstrated beyond question that Christopher's cooking responsibilities were identical to those of the other employees bearing the chef de partie title. Given these factors, I conclude that contrary to McDonnell's partisan assertion, Christopher was assigned to and performed all the duties of a chef de partie. If as McDonnell asserted, a chef de partie was distinguished from a demi chef by his experience and ability to prepare a complete dinner, then Christopher was nothing less than a chef de partie, and evidently considered as such by his supervisors, since he was assigned a full range of evening meal tasks.

2. Christopher's union activity and Respondent's knowledge

Christopher took an early interest in securing union representation for employees at Carambola and actively worked toward that end in the months preceding the December 1988 election.[28] He met with small groups of employees to discuss the Union, attended several union meetings, distributed authorization cards to fellow workers, then collected and returned some 30 to 40 signed cards to Union President Mandrew.

Exchanges between Christopher and various members of management reveal that Respondent initially suspected and then became certain of his union sympathies. For example, some 3 weeks before the election, Christopher's supervisor, Executive Chef Tom Stoner, asked him if he was supporting the Union. Christopher denied that he was. Several weeks later, Banquet Chef Feltz asked him whether he thought the Union would win the election. When Christopher answered that he did not know, Feltz queried, ''aren't you a union supporter?'' Christopher again denied his true allegiance. Persisting, Feltz asked Christopher if he wasn't distributing union authorization cards. Christopher responded negatively a third time, at which point, Feltz laughed and said, ''Theo, you can't fool me.'' (Tr. 312.) A few days before the election, a notice was posted announcing a meeting for all kitchen employees 2 days hence. Shortly before the meeting was to begin, Executive Chef Stoner told Christopher he need not attend, that the meeting was not for him, and that he should get his work done instead. After the hour-long meeting ended, Christopher told Stoner how distressed he was to be the only employee in the department to be excluded, and asked for a meeting with him, Bowden and Marshall. A meeting was arranged at which Christopher told the management officials that he believed his exclusion from the meeting was discriminatory. Bowden assured him that no discrimination was intended and that he was warmly regarded. Christopher then asked Bowden if anyone told him that he had distributed union cards. Bowden responded that he knew nothing about that. Bowden's kind remarks to Christopher on that occasion did not prevent him from testifying that several of the executive chiefs told him that Christopher had disrupted departmental meetings by complaining about the disparity in pay given to white cooks who were imported to Carambola from the mainland every year. Respondent offered no direct evidence of Christopher's allegedly unruly behavior that might have confirmed Bowden's hearsay testimony.

During the course of the above-described meeting, O'Toole, who also was present, mentioned that some employees' cars had been vandalized in the hotel parking lot that morning. O'Toole testified that he raised this matter because an unidentified employee had reported to him that Christopher said some ''people were going to get hurt.'' Consequently, O'Toole thought that he ''would send a message to whoever was responsible that property damage would not be tolerated.'' O'Toole's explanation raises more questions than it answers, but, taken in context, it is fair to infer that O'Toole connected Christopher's alleged statement that people might be hurt to the union campaign and to Christopher's role in it. Lastly, Executive Chef McDonnell admitted that when he first came to Carambola in May 1989, his predecessor, Stoner, told him about Christopher's union activity.

3. The failure to recall Christopher following Hurricane Hugo

Hurricane Hugo struck St. Croix on September 17, leaving devastation in its wake. The destruction was massive: homes were wrecked, power and telephone lines were impaired, roads were mangled and impassable. Living some 18 miles away from the hotel, Christopher was unable to reach the site until a number of weeks after the hurricane subsided, but was not permitted to enter the premises.[29] In February 1990, after learning that he was the only chef who had not been recalled, he went to the hotel to seek an explanation from Chef McDonnell. According to Christopher, McDonnell pointed out that there were few guests in the hotel and then, attempted to justify his decision to recall Christopher's coworkers on the dinner line by explaining that each one had a particularly useful skill.

McDonnell testified that about a week after the hurricane hit, Bowden authorized him to recall a skeleton kitchen staff. Stating that his principal criteria were the individual's versatility, reliability, and attitude rather than seniority, McDon-

[27] Compare R. Exhs. 1 (6) and (13) with R. Exhs. 1 (7) and (8).

[28] Christopher did not distribute cards during the Union's 1987 organizational drive.

[29] Three weeks after the hurricane, Christopher went to an offsite location close to the hotel where the Respondent was issuing checks to employees. At that time, Marshall advised him that an employee meeting would be held some days hence at the same site. However, when Christopher arrived on the scheduled date, he found some employees milling around, but no meeting took place.

nell recalled two of the three former breakfast cooks, two former lunch cooks, a supervising sous chef, a salad chef, a banquet chef,[30] and one chef de partie, Noel Coates, when the hotel resumed operations in October.[31] He also rehired an additional lunch cook, an assistant pastry chef, and six utility workers who essentially were helpers. In early November, a number of kitchen personnel transferred from a sister resort, the Greenbriar Hotel, to Carambola for its high season including a sous chef, George Engel, and four chefs de partie.

Notwithstanding the criteria on which he allegedly relied in recalling cooking staff, McDonnell acknowledged on cross-examination, that he gave Coates a fair to average rating in his December evaluation and recommended no more than a 3-percent wage increase because of his ''below average performance.''(G.C. Exh. 37.)[32] Similarly, McDonnell evaluated luncheon cook Pablo Santiago as below average since he required close supervision and had some problems getting along with people. In a third appraisal, he noted that another of those recalled after Hugo, 25-year-old breakfast and lunch cook, Joseph Auguste, needed additional training in basic cooking skills.[33] McDonnell also admitted that Christopher was more skilled than the two breakfast cooks who were recalled. McDonnell's failure to explain why he preferred less seasoned breakfast and lunch cooks to Christopher, who had been promoted after performing both jobs, and his attempts to soft-pedal his written criticisms of three employees, was, to say the least, unconvincing. In light of his inconsistent practices and negative appraisals which were prepared without an eye on litigation, I place little credence on McDonnell's claim that recall turned wholly on an employee's versatility and dependability.

Before his meeting with McDonnell ended, Christopher asked for a list of all kitchen employees who were recalled and discovered that most of them had less skill, experience, and seniority than he. When McDonnell failed to give him any assurance that he, too, would be reinstated soon, Christopher concluded he was being penalized because of his union activity and decided to file an unfair labor practice charge. In fact, Christopher had not been rehired by November 15, 1990, the date on which he first testified in this proceeding.

Respondent attempted to show during its examination of Christopher that many employees who signed authorization cards were recalled to work, and thereby demonstrate that employees engaged in union activity suffered no retaliation. What Respondent did not prove, however, was that management was aware of precisely which employees signed cards. Therefore, the fact that some employees who signed authorization cards may have been recalled, has no bearing on whether or not Respondent discriminated against those employees whom it knew were leading union activists.

[30] Feltz did not become the banquet chef until 1990. Even if he occupied that position in the fall of 1989, it is hardly likely that the hotel was staging banquets in Hugo's aftermath.

[31] Two other chefs left the island prior to the hurricane and did not return thereafter.

[32] McDonnell attempted unsuccessfully to rationalize the poor evaluation of Coates by stating that it was done to motivate improvement.

[33] McDonnell conceded that he knew Christopher had been a luncheon chef before he was promoted to the dinner staff.

Respondent also failed to explain why Michael Diamond was hired as a chef de partie on October 2 at an hourly pay rate of $8.50, less than Christopher's hourly scale in 1988. According to Noel Coates, an experienced cook whom Respondent acknowledged was a chef de partie, Diamond needed a great deal of supervision and was far less experienced and skilled than Christopher.[34] Moreover, in bringing Diamond, and other chefs, who will be discussed below, to Carambola from the United States after Hurricane Hugo, Respondent violated its avowed policy of recalling local residents before hiring temporary employees from any of the other Rock Resorts. In fact, Bowden acknowledged that Respondent's policy was mandated by law for on October 25, the Virgin Islands legislature enacted a statute under which employers could be fined up to $250 for failing to rehire on a preferential basis, resident workers laid off as a result of the hurricane.

4. Christopher's recall

On or about December l, 1990, the Respondent recalled Christopher to the dinner staff. Although he resumed his former duties and fulfilled the same tasks required of other chefs de partie, Christopher found that on his return, he was not granted a pay raise he believed was due and was required to sign new personnel forms which this time around, uniformly classified him a demi chef. Further, over the next several months, he believed that Respondent's managers were subjecting him to more onerous terms and conditions of employment than were imposed on other employees in an effort to penalize him not only for his union activities, but because of his role in the original unfair labor practice proceeding. Based on Christopher's alleged mistreatment on returning to work, a new complaint issued alleging that Respondent was discriminating against him in violation of Section 8(a)(1), (3), and (4) of the Act.

Christopher testified that on his first day back at work at Carambola, the new executive chef, David Schneider, asked him to sign certain personnel forms which uniformly designated him a demi chef. Christopher stated that on asking what the difference was between a demi chef and a chef de partie, Schneider abruptly retorted, ''What is it to you, I'm not going to tell you.'' (Tr. II, 385.)[35] When Christopher continued to question the demi chef classification, Marshall showed him his most recent evaluation form which referred to him by that title. Christopher finally decided to sign the forms after Marshall's assistant told him his name would not be added to the payroll unless he did. Christopher started back to work at $8.82 per hour and in January 1991, received a 3-percent pay raise, bringing him to a little over $9 an hour. The record establishes that the chefs de partie who transferred to Carambola from Greenbriar received an hourly wage rate of $10, while Noel Coates earned $9.72 until January 1991 when he too received a 3-percent pay raise.

Christopher further stated that later that same day, he expressed some regret to Schneider at having signed forms which improperly labeled him a demi chef. Schneider then arranged a meeting with Bowden at which time, much to

[34] Diamond's employment application confirmed Coates' testimony that he had much less cooking experience than Christopher.

[35] The transcript of the hearing held in Case 24–CA–6269 is designated as Tr. II, followed by the appropriate page number.

Christopher's surprise, Bowden assailed him with the following tirade:

> I am tired of your fucking bullshit and he pointed his finger . . . and said I have it up to here with you. . . . I don't have the time to be bothered with you. . . . I am fed up with bull fucking shit . . . not because your case or your court or your lawyer or all the rest of that bullshit . . . we have a job to do here, we all need to work and . . . you go to work . . . or you go home. [sic] [Tr. II, 389.]

Christopher opted to continue working and resumed his place on the dinner line, performing duties no more or less responsible than any of the other chefs de partie who worked with him. In offering his account of this meeting, Bowden did not deny that he was irritated at having to take time to placate Christopher. While he omitted the obscenities, Bowden confirmed the essence of what Christopher attributed to him.

Over the course of the next several months, Christopher received several disciplinary warnings which, in his view, were undeserved. One incident which resulted in such a warning involved another chef, David Stouffer, who had transferred to Carambola during the Greenbriar resort's offseason. On the evening in question, Stouffer was assigned to plate food for him and for Coates.[36] According to Christopher, while preparing various orders, he asked Stouffer to plate for him rather than Coates who was less busy. Stouffer replied ''God dammit . . . can't you plate for yourself sometimes.'' (Tr. II, 439.) Christopher pointed out that plating was Stouffer's assignment, but began to do the plating himself. Stouffer then approached Christopher and said, ''Theo, why are you fucking with me?'' Christopher replied, ''if I ever have to fuck with you you wouldn't even know it.'' (Tr. II, 439–440.) At this Stouffer shouted to the sous chef, George Engel, that Christopher was threatening him. Engel simply told them both to ''knock it off.'' The incident ended and the dinner service proceeded with no disruptions as far as Christopher could tell.

Coates confirmed as much of Christopher's account as he personally observed. He noted that Christopher needed more help plating than he did, but did not hear precisely what the men said to one another until Stouffer reported to Engel that Christopher had threatened him. From Coates' perspective, the encounter ended quickly without any disruption in service.

The following night, March 7, Christopher was summoned to Schneider's office where Resident Manager Warsham read a written warning which charged him with disorderly conduct by failing to cooperate with and threatening a fellow worker. The warning stated that because of this misconduct, ''the customer was forced to suffer.'' (G.C. Exh. 78.) Based on Christopher's having received a warning 3 years earlier, the warning notice stated that another occurrence would result in suspension and a third warning in termination. Christopher protested that he had not threatened anyone and offered his own account of the exchange which was consistent with his trial testimony about this episode.

Christopher related several other incidents which he felt indicated management's harassment. One evening, at about 6 p.m., after completing his dinner preparations, Christopher stepped outside to take his break. A few minutes later, Schneider told him he was not permitted to take a break at 6 p.m., a rule which was unknown to Christopher. On still another occasion, Christopher was particularly offended when, after he had completed all his other work, and with other dishwashers on hand, Schneider directed him to wash dishes, a task which he claimed never before had been assigned to chefs. He refused the assignment, reminding Schneider that he had just finished cooking, cleaning his workstation, mopping the floor, and putting out the garbage. When Coates was asked whether he ever was asked to wash dishes, he offered the following spontaneous reaction, ''If Chef Schneider asked me to wash dishes, it[s] time for me to find another job because he doesn't want me.'' (Tr. II, 240.)

The day after Christopher refused to wash dishes, Schneider presented him with a job description for a demi chef de partie, telling him he would be expected to do whatever was asked of him. It is interesting to note that the job description defined a demi chef as one who ''Prepares all food items required of assigned work stations . . . directly with Chef de Partie of station'' and has had ''1–2 years cooking experience in a fine dining restaurant.'' (R. Exh. 32.) Schneider confirmed that as he understood it, a demi chef worked with and under the direct supervision of a chef de partie.

Christopher received another warning for playing a walkman radio at work. Christopher explained that he took the radio to work for the first time because he had a family member and friend serving in the military in Saudi Arabia and therefore, was intensely interested in news of the impending crisis in the Persian Gulf. While prepping food, he began to tune the radio, when Engel instructed him he could not listen to a radio while at work. Christopher claimed and Coates confirmed that he put the radio away immediately. The following day, Chef Schneider admonished him for listening to a radio at work. Christopher apologized, and asked if he could not be given a simple verbal warning since he was unaware of a rule forbidding such conduct. Schneider refused his request and gave him a written warning, but noted that it was merely a ''notification of kitchen professional policy.'' (R. Exh. 31 (12).) Not more than a week later, Christopher observed Engel listening for almost an hour to a walkman radio while seated in the kitchen office.

Management had a somewhat different view of Christopher's conduct with respect to each of the foregoing incidents. Thus, Sous Chef Engel testified that he witnessed the encounter between Stouffer and Christopher; that after helping Coates to plate, Stouffer asked Christopher why he had not completed his own plating. Christopher retorted that he was waiting for Stouffer. Engel further stated that although he observed the two men exchanging more words, he did not hear what was said until Stouffer called that Christopher had threatened him. Engel further observed that Christopher taunted Stouffer a bit until he finally told them both to ''knock it off.'' Engel claimed that this contretemps interrupted dining room service to the extent that a guest suffered by having the wrong entree served to him. However, he acknowledged that he could not attribute this error specifically to Christopher since dishes have been returned on other occasions due to a waiter's error in taking the order improperly.

[36] Plating refers to the task of assembling and arranging food artfully on a dinner plate so that it may be presented to the guest.

Moreover, Engel admitted that he, too, bore some responsibility for allowing the wrong dish to be served to the guest.

Engel reported the incident to Schneider and prepared a written summary of what he observed which subsequently was incorporated in the warning notice which Schneider issued to Christopher. Resident Manager Warsham, who prepared the warning notice, acknowledged that he relied on Christopher's 1988 warning in concluding that a written rather than verbal warning was warranted. He also maintained that it was hotel policy to refer to a prior written warning whether or not it related to a similar offense. In fact, Warsham recalled that Christopher's 3-year-old warning was for careless work. Warsham stated that even if Christopher had never received a prior warning, his current misconduct was serious enough to warrant a written rather than verbal warning. Unlike Christopher, Stouffer received only a verbal warning because in Warsham's view, he was not responsible for the altercation.

Engel contended that the incident involving Christopher taking a break at an inappropriate time occurred not at 6, as Christopher alleged, but at 6:30 p.m., just when certain preparations had to commence. Although he was very busy with other duties, Engel complained because he had to perform some of Christopher's chores as well. Irritated, Engel reported the matter to Schneider. Engel also was the supervisor who instructed Christopher to stop listening to his radio. He distinguished his own similar conduct by explaining that he was off duty and playing the radio only while in the glass-enclosed kitchen office. Testimony was adduced that several other kitchen employees listened to radios at work, but did so within the confines of their respective offices. Engel also contended that he had observed chefs de partie wash dishes and pots occasionally.

Engel transferred to Carambola early in November 1990 and returned to the Greenbriar Hotel in late March 1991. Although only 23 years old, he had impressive cooking credentials, having studied at the Culinary Institute of America where his father was an instructor, and worked at several renowned dining establishments in the United States. At the time he testified, Engel was a supervisory chef of the Greenbriar's principal dining room. In his opinion, three of his colleagues who had transferred from the Greenbriar under an apprenticeship program; that is, Stouffer, Tepper, and Tarig, were superior cooks to Coates and Christopher. However, he stated that two other chefs de partie—Jarvis and Diamond—were less skilled than Christopher and, accordingly, were assigned to preparing food rather than cooking it.

Regardless of Engel's opinion, in mid-March, shortly before the Greenbriar transferrees were due to leave Carambola, Warsham assured Christopher that although the hotel was in financial difficulty, his hours would not be cut. At the same time, Warsham asked him to supervise several luncheon cooks who were being transferred to the dinner staff when Engel and others transferred back to the Greenbriar. One of the luncheon cooks, Pablo Santiago, was the only other kitchen employee, aside from Christopher, to be categorized as a demi chef.

III. ANALYSIS AND CONCLUDING FINDINGS

The amended consolidated complaint alleges that the Respondent violated Section 8(a)(1) and (3) of the Act by subjecting Peters, Brown, Pryce, and Augustus to onerous conditions of employment, by terminating all of them but Christopher, whom they failed to recall in a timely manner, because of their active union support and in the case of Peters and Augustus, involvement in concerted, protected activities. Through evidence presented at trial, Respondent suggested that its conduct by prompted by varying, legitimate business considerations.

Where, as here, both unlawful and lawful motives are offered to explain Respondent's conduct, the Board requires that the evidence be assessed according to the burden-shifting, causation analysis set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (lst Cir. 1981), cert. denied 455 U.S. 989 (1982).[37] Initially, the General Counsel must make a prima facie showing that the employer knew of the employee's protected activity and that this knowledge was a motivating factor in its decision to take the allegedly discriminatory action. Once the General Counsel has made this showing, ''the burden of persuasion shifts to the employer to prove that the employee would have . . . received the discipline or other claimed discriminatory action in any event because of unprotected conduct.'' *Champion Parts Rebuilders v. NLRB*, 717 F.2d 845, 849 fn. 6 (3d Cir. 1983).

The evidence bearing on the individual complaint allegations is examined below in accordance with *Wright Line*'s standards.

A. *The Respondent Knew of the Employees' Union Activity*

As described in the Findings of Fact, there can be no doubt that each of the alleged discriminatees took an activist role in the union campaign in the fall of 1988. All five distributed union authorization cards, although admittedly, Pryce and Augustus handed out fewer than did Peters, Brown, and Christopher. Further, they each touted the Union's cause during discussions with fellow workers.

It is abundantly clear that Respondent's agents knew that Peters, Brown, Pryce, and Christopher were more than casual union adherents. At the very least, Respondent became aware of Peter's and Brown's prounion positions when they served as union observers at the December 1988 election. Brown never had attempted to conceal his strong, prounion position. Given his open union support in both 1987 and 1988, Respondent's managers had no reason to assume he would cease advocating union representation in the future. It is interesting that Dawes, who did not arrive at Carambola until some 3 months after the union election, knew of Brown's union stance even before the two men met. Thus, it stands to reason that he also was informed that Peters and Pryce were union proponents.

In addition to Peters' union activities, he was the moving force behind the RO operators' successful effort to recover compensation for overtime work. In fact, Peters' last inquiry into overtime arrearages preceded his discharge by just a few weeks. The brief lapse of time between his protected, concerted activity and his discharge certainly gives rise to an inference of a causal relationship between the two events. Further, prior to the election, several supervisors asked Peters and Pryce to oppose the Union. Such entreaties would not have been made if the supervisors assumed they already were

[37] Approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 403 (1983).

antiunion. Christopher's exchanges with culinary supervisors and his exclusion from a meeting at which management railed against the Union reveal that Respondent was aware of his union activities as well. Moreover, Executive Chef McDonnell, who came to Caramabola in May, 5 months after the election, admitted that his predecessor told him of Christopher's support for the Union.

Proof that Respondent knew of Augustus' role in the union campaign is more elusive. Several coworkers confirmed that she distributed union cards to employees in three departments. However, while her testimony that she led the union campaign in the housekeeping department and was an outspoken critic of housekeeping policies and practices on her own and others' behalf was not specifically controverted, neither was it corroborated. Augustus' supervisor, Susan Carter, denied knowing of Augustus' union activities, although on cross-examination, admitted that she generally was aware of her prounion sympathies.

Even without direct evidence that Respondent's officials were aware of the extent of Augustus participation in the union campaign, I find, in the circumstances present here, that it is appropriate to invoke the small plant doctrine. See, e.g., *Coral Gables Convalescent Home*, 234 NLRB 1198 (1978), enfd. mem. 588 F.2d 826 (5th Cir. 1979). In this regard, the record establishes that management asked the supervisors of each department to identify the employees' union sentiments. Further, witnesses for both the Government and the Respondent testified that Carambola was a small community on an isolated island; that gossip was rampant and that nothing remained a secret for very long. Given this ''small plant'' environment, coupled with management's keen interest in the union attachments of its employees and Bowden's determined opposition to the Union, it is more than likely that Augustus' union activities came to Respondent's attention.

B. *Proof of Animus*

In addition, it can scarcely be disputed that Respondent harbored antiunion animus. Thus, management waged what could be called a negative campaign by, inter alia, exposing all the employees to a taped television program linking the International Union to organized crime. Even more to the point, Bowden and O'Toole admitted their hostility to Mandrew's Union. Mandrew had waged organizational drives in each of the past 2 years. Respondent had no reason to believe that it would escape a similar campaign in 1990. By eliminating key union leaders, Respondent could send an effective message to the rest of its staff that union support was perilous.

C. *The Respondent Unlawfully Discharged the Three Maintenance Employees*

In proving that Respondent's actions were fueled by discriminatory motives, the General Counsel points out that Peters, Brown, and Pryce, three of the five leaders of the union campaign, were the only employees in the maintenance department who were involuntarily terminated. Counsel submits, and I agree, that Respondent's decision to select these three for discharge was not mere coincidence nor the result of neutral business considerations.

As Maintenance Supervisor Dawes expressed it, the essence of Respondent's defense was that his department was overstaffed. Therefore, in order to reduce the number of employees, he chose Peters, Pryce, and Brown, because, for various reasons, they were the most expendable.

The General Counsel exposed the flaws in this defense by showing that in the month preceding the July 28 discharges, Dawes authorized the transfer of three employees into maintenance mechanic positions and in the following month, added a fourth who previously worked as a driver/helper. In addition, notwithstanding a purported need to effect economies in the department, Dawes granted everyone pay raises. Further, Dawes failed to dispute testimony that in the spring, when the low season manpower needs of the hotel could be realistically assessed, he assured everyone in the department that there was sufficient work for them; that he hoped no one would leave and promised that no one would be laid off. Then, without offering any explanation for a hastily conceived need to downsize, Dawes did exactly what he said he would not do. Thus, his testimony is riddled with contradictions casting great doubt on his credibility as well as the purported legitimacy of his and Respondent's motives.

Even if Respondent needed to reduce the size of its maintenance crew, Dawes' attempts to justify the terminations of Peters, Brown, and Pryce were unpersuasive. It is well settled that even if discharges are economically justified, it is no defense if the employees are selected for dismissal because of their union activity. *Seifert Mfg. Co*., 244 NLRB 676, 680 (1979).

1. Peters

Dawes claimed that when the abolition of one of the RO shifts eliminated the need for an operator, he targeted Peters because he was the most junior in the department and the least experienced. As detailed in the fact statement above, Dawes had to know this was not true since he had reviewed the operators' personnel files and could not have failed to notice that Peters had extensive experience in analogous work. Of course, Dawes could have consulted Sampson, the R.O. supervisor, or Nugent, the RO operator whose skills he respected most, if he was interested in a candid opinion as to the comparative abilities of the other employees. Consistent with their testimony at trial, Sampson would have been incredulous at Dawes' chosing Peters for termination. Nugent would have reported what Dawes already knew—that Peters was more qualified than Abraham.

Dawes apparently recognized that his rationale for firing Peters rather than Abraham was flawed for he hit on another excuse: Abraham was more enthusiastic and cooperative than Peters. Dawes did not explain how Peters' ostensible lack of cooperation manifested itself. Indeed, it is difficult to understand how these subjectively determined qualities could serve as a bona fide basis for distinguishing among employees who work entirely alone.

Dawes was caught in still another contradiction when he failed to explain why he had promised Peters that he would be assigned general maintenance chores several days a week when his RO schedule was cut back in June, just 1 month prior to discharging him. Peters reminded Dawes that he had been performing painting chores with a bellman who was transferred into the maintenance department and asked why he, rather than the bellman, should be dismissed. Dawes' at-

tempt to answer this question by suggesting that there was a great need to retain a surly bellman with far less skills than Peters, was too ludicrous to call for further discussion.

In short, Respondent has failed to provide any convincing proof that Dawes would have selected Peters for discharge were it not for his union and protected, concerted activity.

2. Brown

The complaint alleges that Brown was discriminated against, not only by virtue of his discharge, by also by Respondent subjecting him to onerous and rigorous conditions of employment. Specifically, paragraph 7(d) of the complaint alleges his work was closely supervised and monitored, that he was not supplied the parts, tools, equipment and training needed to perform his job, was not provided helpers, was given contradictory orders and assigned more work than other employees.

There is no dispute that Brown never was given the training promised him, and it can scarcely be argued that such training would have assisted him in performing the refrigeration work for which he was not well prepared. The record also contains credible evidence that Brown lacked parts necessary to perform repairs. In fact, the very parts he was awaiting arrived on the date of his discharge. While Brown himself acknowledged that helpers were assigned to him from time to time, his testimony that he generally had to work alone was not denied. Personnel Manager Marshall confirmed that Brown complained to her that he was given contradictory assignments. Taking Marshall's advice, Brown began to record each assignment in a daily log. There is no indication whether or how long this problem may have persisted after Brown began maintaining this log. There is a similar dearth of evidence that Brown's work was closely monitored or that he was assigned more work than other employees.

Beyond these few gaps in the record, a more fundamental problem affects the disposition of the foregoing allegations: no evidence was presented which would permit an inference that Respondent engaged in the above-described conduct for discriminatory reasons. Thus, I am unable to conclude that by its dereliction in failing to provide Brown with parts, training, and helpers, Respondent violated Section 8(a)(1) and (3) of the Act.

This is not to say, however, that Respondent may handicap Brown and prevent him from functioning as an effective mechanic, and then accuse him of poor performance, as Dawes did at the instant trial. Indeed, Dawes found many more faults with Brown at the hearing than he cited on the date of his discharge. At that time, Dawes attributed his termination solely to a lack of work resulting from awarding Brown's duties to an independent contractor. As discussed above, however, business records which I found reliable particularly because they were not created for litigations purposes, failed to show that the Triple A firm assumed all or even a majority of Brown's duties. In fact, Stephens revealed, perhaps unwittingly, that he did not service individual room air-conditioners, which formed a significant part of Brown's work. If Dawes was genuinely interested in economizing, as he claimed, surely, he would not engage Stephens at $27 an hour for somewhat routine mechanical work which could be performed by maintenance mechanics earning a third of that figure. As Stephens speculated, it is far more likely that the four employees who became maintenance mechanics between June and August, some of whom Brown had trained, took over his tasks. Even if they did not, these four employees were junior to and less experienced than Brown. By chosing to fire Brown rather than any one of these four, Respondent contradicted its avowed policy of retaining the most experienced and senior employees. Clearly, the foregoing evidence does not support the reason which Respondent cited on July 28 for firing Brown.

Dawes assigned an official reason for dismissing Brown on the hotel's personnel form, but disclosed the unofficial and more authentic reason when he admitted to Brown that politics was at the root of his discharge. By ''politics,'' Dawes could only be referring to union politics, and to Brown's overt role as a union leader.

The other reasons for Brown's termination, offered for the first time at trial, were no more persuasive. The accusation that Brown was a racist and difficult to get along with came from Stephens, the individual whose bias was disclosed by his avowal that he would do anything for his friend, Bowden. Tony Wheeler, who worked for Stephens, did not corroborate his employer's negative assessment of Brown.[38] Moreover, the incident which Stephens related to expose Brown's allegedly hostile character, said as much about Stephens as it did about Brown. Brown testified in convincing and uncontroverted detail that he laid the wrong pipe only at the insistence of his foreman. Thus, he had no reason for being personally offended when his work was redone. If Brown was irritated, it would have been at his supervisor, not Stephens. Even if the incident occurred as Stephens described it, Brown's reference to ''you white people'' hardly condemns him as a raving racist.[39]

Whether analyzed independently or as a whole, Respondent's asserted reasons for selecting Brown for termination are unconvincing. Moreover, Respondent casts additional doubt on its motives by shifting from one rationale to another at the time of trial to justify discharging Brown. Based on all the foregoing considerations, it is reasonable to conclude that Respondent belatedly seized on additional justifications for Brown's discharge to bolster its case and conceal its unlawful motive. Needless to say, Respondent has not established that it would have fired Brown in the absence of his strong union ties.

3. Pryce

As Pryce clearly recalled, Dawes urged maintenance department employees not to quit in April or May because there was sufficient work for everyone; no one would be laid off. Yet, a few months later, he discharged Pryce without telling her that he had revised the job duties of the inventory clerk, giving her an opportunity to master the new inventory system or even determining whether there were other functions she could perform, as he had with other employees during his reorganization of the department.

Prior to transferring to the maintenance department, Pryce served as a security guard with Carambola. Although this same position was available on the date she was dismissed,

[38] Admittedly, Wheeler, like Brown, is of African heritage. However, he did not even corroborate his employer's comment that Brown was difficult to work with.

[39] The record did not reveal the race of Brown's supervisor.

Marshall made no effort to facilitate her returning to it. Marshall's explanation for her silence in this matter—that Pryce was not interested in a transfer because it might conflict with her outside employment as a security guard—leaves much to be desired.

Under ordinary circumstances, employees were expected to initiate the transfer process by filing applications when they sought to shift from one department to another. However, when Marshall described this process, she plainly was referring to those which occurred while the applicant still was employed and simply seeking to improve his or her employment situation. Pryce's termination was not an ordinary occurrence: Dawes had not fired anyone prior to July 28; to the contrary, he had urged employees to remain. Unlike the typical transfer applicant, Pryce had lost her job before she met with Marshall. Given these circumstances, a troubling questions arises: why would Marshall, who presented herself as a competent and concerned personnel director, not ask Pryce whether she was interested in transferring to a job for which she obviously was qualified and which would require no training. After all, Marshall was not a mere passive bystander in such matters. As she explained, she was advised in advance when employees were to be discharged, and pursuant to Respondent's policy, had on at least some occasions, attempted to fill available positions with current employees rather than terminating them. Indeed, she would seize the initiative and affirmatively ask employees if they could perform other work rather than allowing them to be dismissed.

Marshall also said she failed to ask Pryce about returning to her former position on the security force because she assumed that Pryce wanted to continue moonlighting as a security guard elsewhere. Of course, even given this assumption, nothing prevented Marshall from asking Pryce whether she wished to continue her part-time job or whether she could rearrange her hours so that it would be compatible with the rotating shifts worked by Carambola's security guards. Marshall's silence in this situation suggests that she was well aware that Respondent wanted to terminate Pryce, not transfer her. In sum, Respondent fired Pryce for the same reasons it discharged Peters and Brown—to eliminate in-house union activists.

D. *Augustus Was Not Wrongfully Discharged*

Contending that Augustus was harassed, then suspended and discharged in retaliation for her union activity, the General Counsel submits that Respondent (1) unjustly admonished her for inoffensive conduct; (2) placed bogus warning notices in her personnel file to create the illusion that it was adhering to its progressive disciplinary procedure as a prelude to firing her; and (3) accused her of stretching time although her timesheets to not substantiate that accusation. Accordingly, the General Counsel contends that the reasons which Respondent assigned for her termination were pretextual.

A determination of the true reasons for Respondent's treatment of Augustus turns, in large measure, on whether she or Carter and Turner offered truthful descriptions of her conduct on the job. Demeanor is seldom a foolproof guide to assessing credibility, but to the extent that it may be relied on here, I found Carter and Turner to be the more credible witnesses. Both of them testified in a straightforward, consistent, and logical manner. They appeared to harbor no personal animus toward Augustus. Indeed, the month before Augustus was terminated, Carter noted some improvement in her performance and granted her a small pay raise. On the other hand, Augustus' testimony was vague, rambling, and contradictory.[40] As discussed above, I find no reason to believe that Carter, Turner, or Marshall would be parties to a fraud. Nothing on the face of these documents suggests that they were invented after the fact apart from Augustus' testimony that she never received them. In this regard, even with allowances for cultural differences and her lack of formal education, I found her testimony illogical and inconsistent. Thus, while she alleged that she not told about the various warning notices, she also admitted that she had been suspended and was frequently being admonished and ''written down'' about stretching time. If I were to give Augustus the benefit of the doubt, the best that could be said was that if she could not read the warning notices, she may not have retained the copies provided to her.

Based on these credibility findings, I conclude that Augustus was properly counseled and warned about various incidents for which she was accountable. It should be recalled that months before Augustus became involved in the 1988 union campaign, her conduct and performance were criticized in terms virtually identical to those used by Carter and Turner. In other words, Augustus' employment problems were not newly invented by management after they discovered that she was a union proponent.

One warning notice which admonished Augustus for entering a guestroom while babysitting for another guest's child, seemed somewhat heavyhanded since this was the first time she had engaged in such conduct. As a first time offense, the housekeeping supervisor clearly failed to comply with Respondent's six-step disciplinary system in threatening that ''This is Ruthine's last and final warning.'' (R. Exh. 8 (17).) Apart from this one situation, however, the other warning notices do not demonstrate that Respondent was purposely harassing and monitoring Augustus' work performance for discriminatory reasons. Since Respondent did not rely on this warning as part of its progressive disciplinary procedure, I do not find that, standing alone, it constitutes proof of discriminatory harassment.

The allegation in the complaint that Augustus was engaged in protected activities on her own and others behalf, has no support in the record. Only one outdated incident was offered as evidence of this claim; that is, her protest when she was assigned to clean up a refurbished area.[41] Statements from employees who witnessed her reaction on this occasion, attest to the fact that she was outspoken to the point of being insubordinate. However, such behavior did not convert her into a spokesperson, since the record does not show that she was protesting working conditions at any time for anyone other than herself.

The General Counsel suggests that Carter's faultfinding with Augustus' performance on May 31 and May 2 was unjustified for the time lapses on her worksheets were not unreasonable and could be easily justified. Thus, counsel point-

[40] In reaching these conclusions, I have tried to be especially sensitive to the fact that Augustus was not an educated woman and that her primary language was Patois, not English in contrast to Carter and Turner who both came from the United States.

[41] As noted above, this episode occurred in 1988, prior to the start of the 10(b) period.

ed out in his brief that while Augustus was granted 7 hours under the productivity standards to complete her tasks on May 31, she finished ahead of schedule in only 6.77 hours. He argues that if the time taken to perform normal duties at the start and end of the day, and the half-hour lunch period were taken into account, then Augustus worked just under 8 hours which was arguably within acceptable norms.

With regard to Augustus' performance on May 2, the General Counsel points out in his brief that her worksheet shows she was given an estimated completion time of 3:30, not 3 p.m. as Carter alleged. Hence, he submits that apart from one unexplained 25-minute gap, Carter's concerns about Augustus' worksheet were unwarranted. Augustus testified that although she could not specifically recall her whereabouts during that 25-minute period, she might have performed any number of legitimate, everyday tasks such as fetching towels from the laundry or walking to and from the employees' restroom.

In substance, the General Counsel argues that nothing was wrong with Augustus' worksheets, because overall, she did not exceed Respondent's productivity guidelines or stretch her time beyond the breaking point. His argument does not directly address the concerns which Carter raised and, thus, misses the point. Augustus' worksheets, together with reports from housekeeping staff, provide support for Carter's conclusion that the data which she recorded for May 31 and June 2 bore little relationship to the time she actually spent performing her job; in other words, Augustus was doctoring her worksheets to create the appearance of working an 8-hour day. However understandable it may be that an employee would prefer to be paid more rather than less, particularly when the rate of pay was barely over minimum wage, Respondent expressly declined to guarantee its housekeeping employees a full 8-hour shift or a 40-hour week.[42]

In conclusion, I find that there were valid grounds for management's judgment that Augustus was stretching time by manipulating the information she provided on her worksheets. Although Augustus was the only housekeeper who was fired for this reason, there is no reasonable basis to conclude that she was treated disparately since the General Counsel adduced no evidence that other employees had engaged in the same conduct and to the same extent as she. From this, I conclude that Augustus would have been discharged for her misconduct whether or not Respondent knew of her role in the union campaign.

E. *Respondent Discriminated Against Christopher*

To briefly recapitulate, the earlier complaint in Case 24–CA–6063 alleges that since on or about November 1, Respondent failed to recall Christopher because of his activities on behalf of the Union. Subsequently, after he testified in that portion of the case, Respondent offered Christopher reinstatement to a position as a demi chef, whereupon a second complaint issued alleging that by refusing to classify him as a chef de partie, and through a series of harassing practices, Respondent was continuing to discriminate against him in violation of Section 8(a)(1), (3), and (4). The evidence is more than sufficient to prove these allegations.

As discussed heretofore, without question, Respondent's officials knew that Christopher was not just a union adherent, but one of the key activists in the fall 1988 campaign. Proof of Respondent's animus also is ample, resting on Bowden's overt expressions of opposition to the Union and the subsequent discriminatory discharge of the three other leading union proponents.

Compelling evidence also exists that Respondent failed to recall Christopher until November 30 for patently discriminatory reasons. Thus, although Christopher clearly had many years of experience as a chef at prestigious dining places on St. Croix, Respondent chose to add Neil Diamond to its kitchen staff as early as October 1, although he was by far, a less experienced and talented cook. Making matters worse, Diamond was classified a chef de partie, a title he certainly did not merit. Moreover, notwithstanding Virgin Islands legislation requiring employers to return local residents to work in preference to mainlanders, Diamond was imported from the United States. Respondent did not and could not justify hiring Diamond in preference to Christopher. Diamond's employment at Carambola since October 1 alone warrants the conclusion that Christopher was recalled belatedly for discriminatory reasons.

Proof of Respondent's discrimination against Christopher does not turn solely on Diamond's presence, however. Prior to Christopher's recall, Respondent determined from the number of advance reservations, that it would need at least four more chefs de partie. Instead of recalling Christopher and then adding three others, it negotiated with a sister resort in the States for the services of four interns, two of whom arrived in mid-November and two a month later. All four were much younger than Christopher and much less experienced cooks than he.

As if this were not enough, Respondent also recalled breakfast and luncheon cooks who also were less skilled than Christopher. Respondent defended its decision to retain Pablo Santiago out of pure gratitude that he showed up for work shortly after the hurricane subsided even though he received a poor evaluation and subsequently was put under Christopher's supervision. Gratitude had nothing to do with the recall of the two breakfast cooks and a relief cook. All things being equal, pursuant to Respondent's own ground rules, Christopher's superior skills and greater experience behind the range entitled him to recall before these less qualified cooks, particularly since he already was familiar with these positions. All things were not equal, however; the one critical difference was that unlike the chefs hired and recalled before him, Christopher was a union advocate.

The Respondent defended its refusal to recall Christopher in a timely manner by contending that he was a demi chef whose skills were less needed in the kitchen then those of chefs de partie. The record is clear that when Christopher was promoted to the dinner staff in 1987, his title changed to chef de partie, and thereafter, he performed the same duties that were assigned to all other such chefs. The label demi chef resurfaced in November 1988 while the union campaign was in full swing. Try as he might, Schneider could not make the description of demi chef fit Christopher

[42] Augustus asserted that she worked many overtime hours, presumably implying that by working additional hours, she somehow compensated for her failure to honestly account for her labor during the regular workday. Augustus' timecards indicate that she did work some overtime, but was paid for it. Thus, I fail to see how her overtime work is relevant to or compensates for her stretching time during her regular hours.

who clearly was performing exactly the duties outlined for chefs de partie. It could not be more clear that Respondent's failure to recall Christopher sooner than it did had nothing to do with his job title and everything to do with his union activity. Respondent clearly would have reinstated him at an earlier date if he were not associated with the Union.

When Christopher finally was recalled to work after having testified in the first part of the instant case, Respondent subjected him to a Hobson's choice: either accept the position as a demi chef or quit. This was no choice at all; it was a mean-spirited ploy intended to demean Christopher by compelling him to accept a post whose title and pay rate were below those offered to cooks who were his juniors in age, experience, and qualifications.

Respondent found other ways to harass Christopher following his recall. Specifically, the executive chef issued several warning notices which exaggerated Christopher's role in particular incidents. For example, although Engel did not hear the words which were exchanged, he nevertheless, found Christopher more culpable than Stouffer in the plating episode. Further, Engel specifically held Christopher accountable for an error in service, when it was not at all certain precisely who was at fault, including himself. Relying on Engel's report as gospel, the resident manager, too, held Christopher more liable for the incident and the mistake in service than Stouffer which justified a more serious sanction, even though such mixups occur in any restaurant from time to time.[43] In disciplining Christopher on this occasion, Schneider relied on a 3-year-old warning notice so that he could claim that this was a second warning which could be followed by a suspension. What Schneider ignored, however, was Respondent's disciplinary procedures which posit that a prior warning must be for the same or similar offense. By his hasty and erroneous reference to an earlier warning which bore no relationship to Christopher's current conduct, Respondent unwittingly demonstrated how eager it was to penalize him and ensure that the warning laid the groundwork for more serious consequences in the future.

On another occasion, Engel was not content with simply telling Christopher not to listen to his walkman radio. Instead, he saw fit to report this minor incident, which was over as soon as it began, to Executive Chef Schneider. Schneider, in turn, deemed it appropriate to confirm his oral warning to Christopher in writing notwithstanding Christopher's apology and request that no such warning issue. Yet, this same official did not find it necessary to memorialize in writing another incident involving a subordinate's act of sexual harassment. Respondent rationalized that a letter of apology was sufficient to rectify the matter. This is not to say that Christopher was uninvolved in these incidents. Rather, the point is that the kitchen supervisors were overly eager to fault him and chastise him more severely for situations in which others were at least equally to blame. By subjecting Christopher to this double standard, Respondent harassed and imposed more onerous terms and conditions of employment on him.

Another assault on Christopher's status as a chef de partie, not to mention his self esteem, came about when Schneider instructed him to wash dishes. When Coates was asked whether he had been asked to wash dishes, he reacted so spontaneously and with such repugnance that I am certain that dishwashing was not a task ever assigned to chefs de partie.[44] Schneider surely knew that Christopher would be humiliated by such a request but asked anyway.

Respondent's conduct toward Christopher was nothing short of discriminatory. Christopher was recalled only after evidence presented during the first part of this proceeding made it clear to Respondent, as it did to me, that the failure to return him to work could not be justified. Thereafter, Respondent took actions against Christopher designed to harass and intimidate him. Respondent would not have treated Christopher in the manner described above if he was not a union activist and had not accused the Respondent of wrongdoing in this proceeding. By retaliating against Christopher for these reasons, Respondent violated Section 8(a)(1), (3), and (4) of the Act. See *P.I.E. Nationwide*, 295 NLRB 382 (1989).

CONCLUSIONS OF LAW

1. Respondent, Davis Beach Company, d/b/a Carambola Beach Hotel and Golf Club, St. Croix, U.S. Virgin Islands, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Virgin Islands Workers Union, Local 611, a/w Hotel Employees and Restaurant Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act by discharging Julian Peters, Clarence Brown, and Hildred Pryce on July 28, 1989.

4. Respondent violated Section 8(a)(1), (3), and (4) by failing to recall Theophilus Christopher to his former position as a chef de partie prior to December 1990; classifying him as a demi chef at a lower rate of pay than that to which he was entitled as a chef de partie; and subjecting him to more onerous terms and conditions of employment and harassment through the following acts:

(a) issuing him a second-step written reprimand on or about January 18, 1991;

(b) assigning him dish washing duties;

(c) issuing a written notice to memorialize a verbal reprimand regarding the use of a walkman radio.

5. Respondent has not been shown to have violated the Act by imposing more onerous terms and conditions of employment on Clarence Brown and Ruthine Augustus, by discharging Augustus, or allegedly informing her that she was being terminated for having engaged in union activity.

6. The unfair labor practices set out above affect commerce within the meaning of Section 2(6) and (7) of the Act.

7. Respondent has not engaged in any other unfair labor practices other than those specifically found above for the reasons set forth in this decision.

[43] I take official notice of the fact that on occasion, the best of waiters in the best of restaurants may serve the wrong dish to a customer.

[44] Engel testified that he and other chefs de partie washed dishes, but it was unclear whether he was referring to Carambola or some other hotel, or whether he meant they washed a few dishes used in preparing and cooking food as opposed to the dirty dishes left by guests, or whether they performed such chores when dishwashers were available. Therefore, I cannot conclude that his testimony contradicted Christopher's and Coates' statements that chefs de partie did not do such work.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (3), and (4) of the Act, I shall order it to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act.

Specifically, the Respondent shall be ordered to offer employees Clarence Brown, Julian Peters, and Hildred Pryce immediate and full reinstatement to their former positions, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.[45] Further, I shall order that Respondent make Brown, Peters, and Pryce whole for any loss of earnings or other benefits they may have suffered as a result of Respondent's discrimination against them, to be computed in the manner described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent also shall be ordered to offer reinstatement to Theophilus Christopher to a position as chef de partie, and make him whole in the manner described above for earnings and other benefits lost from October 1, 1990, the date on which he should have been recalled, to the date the hotel ceased doing business, by paying him the difference between the wages he received as a demi chef and those he should have received as a chef de partie.

I also shall direct the Respondent to remove from its files any reference to the unlawful discharges of Brown, Peters, and Pryce, any reference to Christopher as a demi chef since his recall in December 1990, and warning notices issued to him in 1991. The Respondent shall notify the discriminatees that this has been done and that such documents will in no way be used against them.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[46]

ORDER

The Respondent, Davis Beach Company, d/b/a Carambola Beach Hotel and Golf Club, St. Croix, U.S. Virgin Islands, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily discharging employees because of their union and protected, concerted activities.

(b) Discriminating against its employees by failing to recall them to work, or by classifying them in lesser positions at a lower rate of pay than the positions and pay rates applicable to the jobs which they are performing and to which they are entitled because they have engaged in union activities or testified in proceedings before the National Labor Relations Board (the Board).

(c) Issuing warning notices to its employees and assigning them duties in order to impose more onerous terms and conditions of employment and harass them because they have engaged in union activities or testified in Board proceedings.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Clarence Brown, Julian Peters, and Hildred Pryce immediate and full reinstatement to their former positions, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed and make them whole for any loss of earnings or other benefits they may have suffered as a result of Respondent's discrimination against them, in the manner set forth in manner described in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in the remedy section of this decision.

(b) Offer reinstatement to Theophilus Christopher as a chef de partie, or to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings in the manner set forth above in the remedy section of this decision.

(c) Remove from its files any reference to the unlawful discharges of Brown, Peters, and Pryce, any reference to Christopher as a demi chef since his recall in December 1990, and warning notices issued to him in 1991. The Respondent shall notify the discriminatees that this has been done and that such documents will in no way be used against them.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its St. Croix, U.S. Virgin Island facility copies of the attached notice marked ''Appendix.''[47] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[45] After the hearing concluded in this case, Respondent's counsel advised the General Counsel and the court that the hotel had been placed into receivership. Without the benefit of record evidence as to the current status of the hotel or the actions that may be taken for its future operation, I am proposing the Board's traditional remedies for 8(a)(1), (3), and (4) violations, with the understanding that any questions bearing on the extent to which the Order can be implemented will be resolved during the compliance phase of this proceeding.

[46] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[47] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''